

June 3, 2022

VIA ECF

The Honorable George B. Daniels  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007

The Honorable Sarah Netburn  
United States Magistrate Judge  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: ***In re Terrorist Attacks on September 11, 2001***, No. 03-md-1570 (GBD) (SN)

Dear Judges Daniels and Netburn,

On behalf of Judgment Creditors Fiona Havlish, *et al.* (the “Havlish Creditors”), we submit this letter in order to draw the Court’s attention to a filing made today in *Smith v. Islamic Emirate of Afghanistan*, No. 01-CV-10132-LAK (the “Smith Action”), and to respond briefly to the Ashton Plaintiffs’ letter of May 31, 2022. MDL Dkt. 8064.

The Smith Plaintiffs, judgment creditors of the Taliban who have served a writ of execution on the assets of Da Afghanistan Bank at the Federal Reserve Bank of New York (“DAB Assets”), have now filed a related case statement requesting the transfer of their pending turnover proceedings into the MDL to allow for “consistent disposition” of issues involving the DAB Assets. *See* Smith Dkt. 66 at 2 (attached hereto as Exhibit A). The Smith Plaintiffs noted Judge Daniels’ clear statements at the April 26, 2022 conference that the MDL Court is the only proper forum for determining all such issues. *Id.* (citing Apr. 26 Tr. at 3, 14-15, 39). The Smith Plaintiffs also indicate that they intend to take part in the Framework Agreement in which over 9000 members of the 9/11 Community have now elected to participate and which shall govern the distribution of the DAB assets in the event the Court grants turnover. *Id.*

The Ashton Plaintiffs, in their letter of May 31, repeatedly emphasize the importance of “this Court [having] unified control over the disposition of the DAB Assets.” The Havlish Creditors agree—and note that it was the Ashton Plaintiffs who just six weeks ago, in a transparent attempt to “judge shop,” Apr. 26 Tr. at 14, sought an emergency injunction prohibiting the MDL Court from adjudicating the pending turnover proceedings relating to the DAB Assets. But as recent developments show, the Ashton/Wodenshek class action—putting its many other defects aside—is simply not necessary to ensure this Court’s consistent and equitable adjudication of issues involving the DAB assets. As today’s filing in the Smith Action shows, that case may be

June 3, 2022

Page 2

brought into the MDL should this Court and Judge Kaplan deem it appropriate. Moreover, the validity and priority of the prejudgment writ of attachment in *Owens v. Taliban* has also now been placed squarely before the MDL Court. *See* MDL Dkt. 8020 (Owens Plaintiffs' motion to intervene); MDL Dkt. 8056 (Federal Insurance Creditors' cross-motion to vacate the *Owens* attachment). This Court is thus well-positioned to ensure that the 9/11 MDL remains "the only forum that exists to resolve these issues." Apr. 26 Tr. at 14.

The Court understood these realities when it dismissed the putative class action, having noted the day before that "nothing . . . would convince" Your Honors that the class action was somehow a preferable procedural vehicle to resolving the parties' claims to the DAB Assets. *Id.* at 35. And indeed, nothing in the Ashton Plaintiffs' May 31 letter provides any basis for the Court to reconsider its determination that adjudicating the turnover proceedings within the MDL is the proper way to ensure that any distribution of the DAB assets is lawful, equitable, and consistent. For these and other reasons, the Court should deny the Ashton Plaintiffs' invitation to reconsider its dismissal of the putative class action.

Respectfully submitted,

/s/ Lee Wolosky

Lee Wolosky

JENNER & BLOCK LLP

1155 Avenue of the Americas

New York, NY 10036

(212) 891-1628

lwolosky@jenner.com

Douglass A. Mitchell (*pro hac vice*)

JENNER & BLOCK LLP

1099 New York Avenue, NW, Suite 900

Washington, DC 20001

(202) 639-6090

dmitchell@jenner.com

*Counsel for Judgment Creditors Fiona Havlish, et al.*

cc: All counsel of record (by ECF)